

FWP COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: December 20, 2012

Agenda Item: Nevada Spring Creek Water Right Acquisition and Conversion

Division: Fish and Wildlife **Action Needed:** Approval of Final Rule/Action

Time Needed on Agenda for this Presentation: 15 Minutes

Background

FWP is asking the Commission to approve the transfer of six water right claims on Nevada Spring Creek from the Nevada Spring Creek Partners to FWP. Nevada Spring Creek, located in Powell County near the town of Helmville, is a Blackfoot River Basin stream that originates from an artesian spring and flows for approximately 3.2 miles to Nevada Creek prior to its confluence with the main stem of the Blackfoot River. Nevada Spring Creek Partners wish to permanently transfer these water rights to instream flow through a third party purchase by Trout Unlimited and a donation to FWP. Upon Commission approval of the transfer, FWP would seek the Department of Natural Resources and Conservations administrative approval to convert the water rights to an instream flow purpose. The 2005 Blackfoot Basin Restoration Action Plan identified Nevada Spring Creek as a moderate priority stream. Enhanced stream flow will improve spawning and reproduction habitat for westslope cutthroat trout and other species. There are no other consumptive-use rights that divert water from Nevada Spring Creek. In April 2012, the Commission endorsed FWP's proposal to evaluate the transfer of these water rights to FWP, negotiate the terms of the gift, and report back to the Commission with a recommendation for final action.

Public Involvement Process & Results

FWP prepared a Draft Environmental Assessment (EA) for this project and conducted a 30-day comment period between November 3 and December 3, 2012. FWP received a total of eight comments. Of these comments, seven were supportive of the acquisition. One commenter expressed a concern that the acquisition was taking irrigated lands out of production. In this instance, the private landowner has previously made the management decision to cease irrigation and convert the property to other uses. With that conversion completed, they are offering FWP the water rights asset.

Alternatives and Analysis

The following alternatives were included in the Draft EA of the project. Under the No Action Alternative, FWP would not accept the donation of water rights from Trout Unlimited (TU), and would not convert them to instream flow. Under the Proposed Alternative, FWP would accept the donation of water rights from Trout Unlimited (TU), and would apply to the Department of Natural Resources and Conservation (DNRC) to permanently convert them to instream flow.

Agency Recommendation & Rationale

Public comment and FWP's analysis supports the acquisition and instream flow conversion of the NSC water rights. FWP is asking the commission to approve a water rights acquisition and conversion in accordance to §85-2-436 MCA.

Proposed Motion

"I move that FWP acquire through donation six irrigation water rights on Nevada Spring Creek, and pursue the permanent conversion of these irrigation water rights to an instream flow fishery purpose."